

中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

June 7, 2024

Mr. Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT

Email: investigations2@adcommission.gov.au

Comments on Applications for Imposition of Dumping and Countervailing Duty in Respect of Certain Clear Laminate Glass, Interchangeable Bolted Clipping System Brackets and Interchangeable Bolted Clipping System Clip-Heads Exported to Australia from the People's Republic of China

On May 21 and 22, 2024, the Government of the People's Republic of China (GOC) received the two consultation invitation letters from the Anti-Dumping Commission (ADC) of Australia respectively, concerning three applications for imposition of anti-dumping and countervailing duties in respect of certain clear laminate glass (glass), interchangeable bolted clipping system brackets (brackets) and interchangeable bolted clipping system clip-heads (clip-heads) from the People's Republic of China. Upon the aforementioned invitations, the GOC through the Ministry of Commerce (MOFCOM) would like to seize this opportunity to clarify the status of matters referred in Article 11.2 of the WTO Agreement on Subsidies and

Countervailing Measures (ASCM), and Article 5.2 of the WTO Anti-Dumping Agreement (ADA) as well.

China has always believed that the bilateral trade between China and Australia is a win-win cooperation with reciprocal benefits, rather than a zero-sum game. Over years, industries from the two countries have closely cooperated driven by market dynamics, thereby establishing robust industrial and supply chains which are essential for economic globalization. The three subject products from China serve as valuable supplements to the demand of the Australian market. Unless genuine circumstances necessitate investigations in line with WTO regulations and domestic legislation, governments should refrain from intervening through the misuse of trade remedies. Such intervention would not only squander the administrative resources on both ends, but also jeopardize the long-term interests of industrial cooperation of both countries and consumer welfare.

With respect to the three applications, we found that they lack basic evidence and disregard the WTO rules and recent ruling of DS603 case.

1. Subsidy allegations are unsubstantiated claims and simple assertions without basic evidence regarding the existence, amount and nature of the subsidies in question.

The sub-paragraph (iii) of Article 11.2 of the ASCM requires the application shall contain “evidence with regard to existence, amount and nature of the subsidy in question”. However, we found that neither the Glass Application nor the Brackets and Clip-Heads Applications fulfill this requirement.

1.1 Glass Application: There are obvious mistakes in the claimed source of “China’s most recent notification of active subsidy programs to the WTO”.

The applicant mentioned at the beginning of its subsidy

allegations that one of its main sources is “China’ s most recent notification of active subsidy programs to the WTO” , and further claimed that “China’s 27 August 2021 notification is its most recent notification to the WTO’s Committee on Subsidies and Countervailing Measures” and “in this notification, China identifies subsidies available at the central and sub-central levels of government which take the form of ..., land-use rights, discounted inputs, ...”.

The GOC would like to point out that, firstly, the most recent notification of China to the WTO’s Committee on Subsidies and Countervailing Measures is on 20 July 2023. Secondly, either in China’s 27 August 2021 notification or 20 July 2023 notification, there are not such so-call subsidies as land-use rights or discounted inputs. The GOC would like to reiterate that no such subsidy exists in China. The aforementioned two mistakes show that the applicant’s allegations are just simple assertions because the relevant information can be easily found on the WTO’s website which makes the applicant seems to be so rash and irresponsible when fabricating this application.

The sole evidence of subsidy alleged by the Glass applicant is a foreign investigation more than 5 years old that did not lead to imposition of CVD order.

The clear laminated glass application alleges that the exports from China benefited from a range of subsidies, including several “LTAR” based subsidies concerning the provision of electricity, soda ash, silica sand, calcium carbonate, and land. The subsidy allegations are based primarily on the United States Department of Commerce (USDOC)’s decision on its 2019/20 investigation into Certain Glass Containers from China. But the period of investigation of the US glass containers case was the year of 2018, which is now more than five years ago. There is no explanation in the application as to why a

USDOC investigation in 2018 is relevant to an Australian investigation in 2024.

For each of the LTAR subsidies, USDOC relied on Adverse Facts Available methodology to determine there was a financial contribution, a benefit and specificity, which are not the realities, thus cannot be considered as evidence of any current subsidy, nor evidence of the amount or nature of any such subsidy.

Besides, this US investigation did not ultimately result in the imposition of any measures, so that the accuracy, veracity and compliance of those conclusions made by the USDOC with WTO obligations has never had to be tested with the framework of WTO rules.

Therefore, the application concerning clear laminated glass does not contain sufficient relevant information as required for initiation of a countervailing investigation pursuant to Articles 11.1 and 11.2 of the ASCM.

1.2 Brackets and Clip-Heads Applications: subsidy claims are simple assertions, that lacked even basic evidence with regard to existence, amount and nature of the subsidy in question.

The subsidy claims in the Brackets and Clip-Heads applications are based only on the findings in ADC Report 590 of continuation inquiry of measures on Hollow Structural Sections from China. Basically, the applicant claims that the ADC should investigate all subsidies determined in Report 590 as if they apply to Brackets and Clip-Heads. The interlinkage appears to be that the Hollow Structural Sections and the Brackets and Clip-Heads are all produced from Hot Rolled Coil. However, as we know that, the direct main raw material input used for producing Brackets and Clip-Heads in fact, is galvanized steel sheet, which is different from Hot Rolled Coil. So the applications attempt to confuse the major raw material input in order to take advantage of the Hollow Structural

Sections case findings, other than to provide real evidence to prove its allegations.

With respect to the proof of existence of the subsidies in question, the evidence provided in the applications relates only to the ADC Report 590 in 2022, and the findings in that inquiry were based only on findings in another review of Hollow Structural Sections measures in 2020 (ADC Report 529), which was essentially based on “facts available”. The cooperative exporter in Report 590, which is Dalian Steelforce, is not subject to CVD order. As such, the Brackets and Clip-Heads Applications fail to provide evidence to prove the existence of the alleged subsidies.

Meanwhile, There is no evidence regarding the “amount” of subsidy in the applications either. The applicant only alleged that:

Abey Australia does not have access to information to permit it to quantify the amount of the benefit received under each program by the Chinese manufacturer/exporter. Abey Australia does consider, however, that the Chinese manufacturer/exporter is in receipt of benefits from the GOC under one or more subsidy programs that enable it to price significantly below Abey Australia’s selling prices in Australia. Abey Australia submits that the benefits received from the GOC by exporters of the subject goods in China have received countervailable benefits in excess of negligible levels.

This is a “simple assertion, unsubstantiated by relevant evidence” which “cannot be considered sufficient to meet the requirements of” Article 11.2 of the ASCM.

Besides, there is no evidence regarding the specificity of the alleged subsidies, because the specificity is not mentioned in the application.

As such, the applications concerning brackets and clip-heads do not contain sufficient relevant information as required for initiation of a countervailing investigation pursuant

to Articles 11.1 and 11.2 of the ASCM.

1.3 Clarifications on specific alleged subsidy programs of so-called Provision of Goods/Services by the Government at LTAR

Provision of Raw materials or Inputs for LTAR

The GOC would like to emphasize that, there is no systematic subsidy program in China for the so-called “Provision of Goods and Services for LTAR”, nor are there corresponding laws or policies governing the pricing or production of the raw materials or inputs of the three subject products. In China, the production and sale of glass, brackets, clip-heads and their raw materials or inputs are determined by the market forces, not by the state intervention. The GOC does not impose restrictions or regulations upon the prices of the relevant products or production factors.

All enterprises in China are independent business entities, operating on a commercial basis. They make decisions independently with respect to their day-to-day commercial operations, including production, formation of contracts, price-setting, and commercial negotiations, without any interference or influence from any government agency, and are not vested with the authority to exercise governmental functions. Therefore, the companies which produce or supply raw materials or inputs of the three subject products do not constitute public bodies within the meaning of Article 1.1 of the ASCM

Provision of Electricity for LTAR

Electricity supply is a public utility service; and the electricity supplier, the provider of a public utility service – a principle upheld by both China and Australia. It is essential to clarify that the provision of electricity should not be misconstrued as a form of subsidy.

First, the GOC has proactively promoted electricity market

reform for commercial and industrial electricity. Notably, according to *Notice on Further Deepening the Market-Oriented Reform of On-Grid Electricity Price for Coal-fired Power Generation (FGJG (2021) 1439)* (“NDRC Notice 1439”) issued by the National Development and Reform Commission (“NDRC”) on October 11, 2021, the commercial and industrial electricity catalogue sales price for all commercial and industrial electricity users has been abolished, signifying a pivotal shift towards an open electricity trading market.

Second, the NDRC’s role in regulating provincial electricity pricing is at a macro level, and the NDRC relinquishes direct involvement in determining electricity prices within provinces. After the issuance of *NDRC Notice 1439*, the NDRC has not released any regulations on commercial or industrial electricity prices. The role of the NDRC is to formulate macro level policies, and the NDRC is not involved in the direct oversight of the provincial electricity trading market and the determination of specific electricity prices.

The GOC would like to reiterates that, the prices of commercial and industrial electricity are set through market trading, and the provision of electricity is not a subsidy.

Provision of Land for LTAR

In 1998, the *Land Administration Law* was promulgated, and since then, all land use rights are granted primarily through transfer and compensation mechanisms, except for governmental entities and military entities, municipal infrastructure and social welfare facilities, energy, transportation, and irrigation facilities with government support, and other entities explicitly set out by laws and regulations. In 2001, the Ministry of Land and Resources issued a *Catalogue of Allocation of Land*, in which the scope of application of allocated land use rights was further limited. Accordingly, land use right for profit-driven industrial and commercial use should

normally be obtained through transfer. At present, the assignment of land use rights is carried out through market-oriented approaches in accordance with the *Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation* and the *Civil Code of the People's Republic of China*. With respect to the land for industry, commerce, tourism, entertainment, commercial housing or other business purposes, or on which there are multiple intended land users, the assignment shall be conducted through bid invitation, auction or quotation. Therefore, the current land use rights in China are allocated to individuals and enterprises through fair competition and public bidding, and there is no so-called “provision of land for LTAR” program.

2. Dumping allegations: Continued unlawful resort to cost surrogate methodology. The Panel Report of DS603 clearly concluded that the cost surrogate methodology is inconsistent with Article 2.2.1.1 of the ADA. However, the Brackets and Clip-Heads applications still unlawfully claimed the existence of dumping based on out-of-country costs. The applicant constructed the normal values of Chinese subject products based upon its own production costs and adjusted for steel input costs for Korea and Taiwan, China. This is a reckless violation and disrespect of the WTO DSB ruling as the applicant failed to demonstrate how such out-of-country costs could reasonably reflect the production costs of Chinese producers.

Meanwhile, regarding the allegations in the three applications that Particular Market Situation exists in the Chinese glass and steel market. GOC would like to reiterate that those are unjustified discrimination and prejudice against the Chinese glass and steel sectors. The Chinese glass and steel sectors are market orientated, with the pricing of relevant products are fully determined by market force and without control or intervention of the government. The GOC advises that,

in China the only products and services subject to government guidance or price control are those identified in Article 18 of *the Price Law of the People 's Republic of China* (the “Price Law”), which provides:

Article 18 The government may adopt the government-guided prices or government-set prices when necessary for the prices of the following commodities and services.

1. a very small number of commodities that have a vital bearing on the development of the national economy and the living of the people,

2. a small number of commodities for which resources are scarce;

3. the prices of commodities under natural monopoly management,

4. important public utilities,

5. important public welfare services.

Neither glass, steel nor bolted clipping system products are covered by the list above.

Furthermore, under Article 6 of the *Price Law* “commodity prices and service prices, with the exception of those subject to government-guided prices or government-set prices under Article 18 of the Law, shall be subject to market - regulated prices and set by operators on their own in accordance with the Law.” Article 7 provides that “*operators shall follow the principles of fairness, lawfulness and good faith in determining prices.*” Further, Article 8 clarifies that “*production and operation costs and the market supply and demand situation shall be the basis for the determination of prices by operators.*” As such, it is clear that the pricing of glass, steel and bolted clipping system products is entirely a market-driven activity, and not involve any government intervention or control.

Therefore, the unlawful dumping allegations based on the illegal cost surrogate methodology shall be rejected.

3. Excessive and unjustified redactions of “confidential” information renders the application as effectively empty assertions. The AD/CVD application concerning clear laminated glass contains excessive and potentially unjustified redactions of information. The redactions make it almost impossible for interested parties to gain sufficient clarity as to the alleged factual situation, or to provide any informed critique about the validity of the claims. For example, we note that much of the section purporting to demonstrate a link between the alleged injury and alleged dumping/subsidization includes charts that have been redacted as “confidential”. The trends should be made visible even if the values are redacted. Without being able to see and understand these trends, the descriptions are literally and effectively empty assertion.

In conclusion, The GOC believes that the three applications lack basic evidence and disregard the WTO ruling, thus should be rejected by the Australian investigation authority.

Yours sincerely

Fan Xi
First Secretary, Export Division I
Trade Remedy and Investigation Bureau
Ministry of Commerce, P.R.C.